IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.39819 of 2006
SIYARAM SINGH & ORS
Versus
STATE OF BIHAR & ANR
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4. 11.8.2008. Heard Sri Nageshwar Prasad, the learned counsel for the petitioners and Sri Jharkhandi Upadhayay, the learned A.P.P. for the State. Although notice in the admission matter was validly served on O.P. No.2, yet he has chosen not to appear and contest this application for reasons best known to him.

The petitioners in this application have questioned the propriety and validity of the order dated 13.7.2006 passed by the learned Sub Divisional Judicial Magistrate, Banka, in a proceeding under Section 144 Cr.P.C., being Case No.391 of 2006, whereby and whereunder he has converted the said proceeding into one under Section 145 Cr.P.C.

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There is no dispute regarding the fact that a proceeding under Section 144 Cr.P.C. can be converted into one under Section 145 Cr.P.C. provided the conditions for an order under Section 145 Cr.P.C. exist when such conversion is made or ordered.

However, in the instant case the order of conversion is vitiated because he has neither given any finding regarding bonafide dispute over a property nor about any apprehension of breach of peace. Admittedly, these two findings are the sine qua non for converting a proceeding under Section 144 Cr.P.C. into one under Section 145 Cr.P.C. The impugned order does not even reflect the subjective satisfaction of the learned Magistrate over the facts of the

case. This, to my mind, is unwarranted in law and cannot be sustained in law.

Accordingly, this application succeeds and the impugned order is hereby quashed.

(Abhijit Sinha,J)

P.S.

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